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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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In the Matter of	)	
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Market Entry and Regulation of Foreign-affiliated Entities	)	IB Docket No. 95-22
	)	RM-8355
	)	RM-8392

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

COMMENTS OF ACC GLOBAL CORP.

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SUMMARY

ACC Global Corp. ("ACC") commends the Commission for recognizing the need to increase business opportunities for U.S. companies in the international telecommunications marketplace. Specifically, ACC supports the goals enunciated by the Commission in this proceeding: 1) to encourage effective global market competition for communications services; 2) to prevent anticompetitive conduct in the provision of international services; and 3) to encourage foreign governments to open their communications markets. ACC, however, submits that the Commission should broaden its oversight of foreign carriers that seek to participate in the U.S. telecommunications market, including those that seek participation through investment in foreign-based alliances with U.S. carriers.

The burgeoning global alliances among dominant international carriers have a significant negative impact on emerging U.S. competitive international carriers. The potential for anticompetitive conduct is a real threat to the Commission's goal of effective global competition. Accordingly, the Commission should formally review and require prior Commission approval of all types of affiliations, alliances and consortiums between major U.S. facilities-based carriers (*i.e.*, carriers with a ten percent or more telecommunications market share) and foreign PTTs. Further, the Commission must implement appropriate safeguards to ensure that such alliances do not have an adverse impact on the U.S. international telecommunications market.

Such an expansion of the Commission's oversight policies will result in a level playing field both in the U.S. and abroad. Further, the imposition of appropriate safeguards will support the development of increased global competitiveness by U.S. telecommunications carriers and increase the incentive for closed foreign markets to introduce competition to their markets.

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ACC Global Corp. ("ACC"), by its undersigned counsel, hereby submits these comments in response to the *Notice of Proposed Rulemaking* ("*NPRM*") adopted on February 7, 1995, in the above-captioned proceeding.[1/] ACC strongly endorses the three goals enunciated by the Commission in this critical proceeding: 1) to encourage effective global market competition for communications services; 2) to prevent anticompetitive conduct in the provision of international services and facilities; and 3) to encourage foreign governments to open their communications markets.[2/]

In charting the international telecommunications policies for the United States as it prepares to enter the 21st century, the Commission must adopt regulations that will allow the United States to maintain its position in the vanguard of nations with advanced and competitive telecommunications services. As the Commission is well aware, telecommunications services are as essential to today's economic and business opportunities as highways and railroads in the past. Accordingly, the Commission properly recognizes in the *NPRM* the importance of promoting effective competition in the global market to ensure that U.S. businesses and

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1/ FCC 95-53 (released February 17, 1995).

2/ *NPRM* at para. 26.

consumers are offered the full benefits of competition -- reduced rates, increased quality and new innovative services.[3] ACC, however, respectfully submits that, based on its participation in the international telecommunications marketplace, the Commission should broaden its oversight over foreign carriers that seek to participate in the U.S. telecommunications market, including those that seek participation through investment in foreign-based alliances with major U.S. carriers (*i.e.*, 10 percent or more share of the telecommunications market). Further, the Commission should carefully scrutinize all types of affiliations, alliances and consortiums between major U.S. carriers and dominant foreign carriers, and implement safeguards that ensure that such alliances do not have an adverse impact on the U.S. international telecommunications market.

I. BACKGROUND AND STATEMENT OF INTEREST

ACC is a non-dominant entrepreneurial interexchange carrier corporation that resells private line services and offers resold international telephone service through use of its affiliates' switching sites in Buffalo and Rochester, New York, and elsewhere in the U.S. ACC has U.S.-owned foreign affiliates in Canada and the U.K.

ACC is authorized to provide a variety of international private line and switched services between the U.S. and various points, including international switched telecommunications services between the U.S. and Canada and the U.S. and the U.K. carried via private lines.[4] ACC also recently obtained approval of its application for Section 214 authority to provide international facilities-based service to various international points. *See ACC Global Corp.,* File No. I-T-C-95-081, *Order, Authorization and Certificate,* DA 95-510 (released March 22, 1995).

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[3] *See id.* at para. 27.

[4] *See* FCC File Nos. ITC-93-034 and ITC-93-035.

Several of ACC's U.S. affiliates are authorized by the Commission pursuant to Section 214 to offer resold international switched telecommunications services between the United States and various international points.[5]

As a beneficiary of the Commission's progressive international policies, ACC has a direct and vital interest in the opening of foreign markets to U.S.-owned firms. Further, ACC plans to enter into correspondent and other agreements with many of the foreign monopoly or otherwise dominant carriers with market power that have recently become allied or associated with major U.S. carriers such as AT&T Corp. ("AT&T"), Sprint Communications, L.P. ("Sprint"), and MCI Telecommunications Corporation ("MCI").

II. THE COMMISSION SHOULD EXPAND ITS FOCUS ON THE OVERALL COMPETITIVE IMPACT OF GLOBAL ALLIANCES.

Competition has been proven to be the most effective way of providing society with the services that it desires. Vivid examples of the exciting possibilities that emerge when competition is allowed and encouraged to develop have been reflected in the plethora of choices in price, quality, and range of capabilities available in today's U.S. telecommunications market.

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[5] *See ACC Long Distance Corp.*, DA 87-966, File No. ITC-87-135, Order, Authorization, and Certificate (released August 4, 1987); *ACC Long Distance of Ohio Corp.*, DA 92-801, FCC File No. ITC-92-138, Order, Authorization, and Certificate (released June 26, 1992); *ACC Long Distance of Massachusetts Corp.*, DA 92-801, FCC File No. ITC-92-139, Order, Authorization, and Certificate (released June 26, 1992); *ACC Long Distance of Illinois Corp.*, DA-92-801, File No. ITC-92-131, Order, Authorization, and Certificate (released June 26, 1992); *ACC Long Distance of Pennsylvania Corp.*, FCC File No. ITC-93-221, Report No. 16368 (released August 4, 1993); *ACC Long Distance of Connecticut Corp.,* ITC-94-414, Report No. I-7035 (released September 14, 1994); *ACC Long Distance of Rhode Island Corp.,* ITC-94-413, Report No. I-7035 (released September 14, 1994); *ACC Long Distance of Georgia Corp.,* ITC-95-103, Report No. I-8014 (released February 22, 1995); *ACC Long Distance of Maine Corp.,* ITC-95-105, Report No. I-8014 (released February 22, 1995); *ACC Long Distance of New Hampshire Corp.,* ITC-95-102, Report No. I-8014 (released February 22, 1995); *ACC Long Distance of Vermont Corp.,* ITC-95-106, Report No. I-8014 (released February 22, 1995); *ACC National Long Distance Corp.,* ITC-95-104, Report No. I-8014 (released February 22, 1995).

Competition has been beneficial for the public in every telecommunications market in which it has been authorized.[6] The introduction of competitive customer premises equipment, inside wire, mobile radio, network equipment and long distance services are well-documented. Moreover, the Commission has properly determined that it is in the public interest to encourage the expansion of competition on international routes.[7] The Commission therefore has granted explicit authority for resellers to offer resold switched telecommunications services via international private lines interconnected with the PSN at both the United States and the foreign ends of a circuit.[8]

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[6] This recognition comports precisely with the statement of Vice President Al Gore, in his speech of January 11, 1994 outlining the Administration's comprehensive legislative package on telecommunications reform, that:

> Today, we must choose competition again and protect it against both suffocating regulation on the one hand and unfettered monopolies on the other. To understand why competition is so important, let's recall what has happened since the breakup of AT&T ten years ago this month. As recently as 1987, AT&T was still projecting that it would take until the year 2010 to convert 95% of its long distance network to digital technology. Then it became pressed by the competition. The result? AT&T made its network virtually 100% digital by the end of 1991. Meanwhile, over the last decade the price of interstate long distance service for the average residential customer declined over 50%.

[7] *See, e.g., fONOROLA Corporation* (File No. I-T-C-91-105) and *EMI Communications Corporation* (File No. I-T-C-91-050), *Memorandum Opinion, Order and Certification*, FCC 92-464, 7 FCC Rcd. 7312 (Nov. 4, 1992), *recon. denied, Order on Reconsideration*, FCC 94-81 (released May 6, 1994) ("*fONOROLA/EMI*").

[8] *See, e.g., id.* The Commission has found that private line resale competition can exert pressure on international telecommunications rates and that resold private lines will drive rates closer to costs. It has also found that lower rates will encourage an increase in the volume of traffic initiated at the foreign end of communications, further reducing the balance of payments deficit attributable to international telecommunications, and increasing consumer welfare through increased international communications.

As the Commission is well aware, the focus of telecommunications providers has become increasingly global over the last several years.[9] Promotion of effective competition in the global market should be a primary goal at this time,[10] because global competition remains highly asymmetric,[11] and encouragement of foreign market liberalization is a key means of achieving healthier competition both at home and abroad.[12]

A. *Global Alliances Among U.S. Carriers and Foreign Carriers with Market Power Pose a Significant Threat to Effective Global Competition.*

ACC agrees with the Commission's assessment in the *NPRM* that the U.S. should encourage global competition through market entry oversight, and supports policies which promote opening foreign markets to new competitive entrants. The Commission's existing policies and the *NPRM*, however, do not adequately address the potential anticompetitive dangers posed by the recent formation of, as well as proposed, strategic alliances and associations of formerly independent competitors. The nascent international telecommunications resale industry as well as the Commission's goal of achieving effective competition in the global telecommunications marketplace are being threatened by these burgeoning combinations among major carriers which may very well lead to the substitution of a worldwide oligopoly of globally allied former monopoly carriers for an international services market characterized, at least on the U.S.-end, by rigorous competition.[13] Indeed, the race among major carriers to form

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[9] *NPRM.* at para. 20.

[10] *Id.* at para. 27.

[11] *Id.* at para. 28.

[12] *Id.* at para. 31.

[13] The European Union has recognized the potential anticompetitive impact of such global alliances. Accordingly, it recently launched an investigation into the agreement between (continued...)

global alliances, partnerships, and consortiums has been analogized to the popular board game of Risk.[14] Sir Ian Vallance, chairman of British Telecommunications plc, recently stated that, "The game is how you develop your pieces around the world [because] once the squares are taken by your rivals, your options are constrained."[15]

These recently-formed (as well as proposed) strategic alliances, partnerships and consortia among major U.S. carriers and foreign carriers with market power substantially diminish the competitive opportunities available to nascent international telecommunications entrants while simultaneously increasing the barriers that such market entrants must face. For example, a long-standing entry barrier facing new entrants has been the difficulty in obtaining foreign correspondent agreements. The on-going international consolidations among major U.S. carriers and established foreign carriers have exacerbated the problem.

Furthermore, even when alliances or associations are purportedly "non-exclusive," there are built-in incentives that substantially increase the probability that the alliance relationships will

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[13](...continued)
Unisource NV -- the European consortium composed of Sweden's Telia AB, PTT Telecom Netherlands and Swiss Telecom PTT -- and the Spanish state phone operator Telefonica de Espana SA for Telefonica to join Unisource. *EU Is Investigating Proposed Unisource, Telefonica Alliance*, Wall Street Journal, Mar. 23, 1995, at B-6. Significantly, the EU added that it was also exploring the links between the Unisource-Telefonica agreement and the Uniworld alliance (the alliance is 60% owned by Unisource and 40% owned by AT&T) between AT&T Corp. and Unisource. *Id.* (Under European Union regulations, the Uniworld venture is subject to regulatory approval.) The EU is also investigating the Deutsche Telekom-France Telecom Atlas joint venture and its expansion to include Sprint.

[14] *Who'll be the First Global Phone Company?*, Business Week, Mar. 27, 1995, at 176.

[15] *Id.* at 177. Similarly, AT&T Chairman Robert Allen stated that "[w]hat's important over the next four or five years is that [AT&T] expand as quickly as possible around the world. *Id.*

become exclusive or that unaffiliated members will receive inferior treatment.[16] Thus, for instance, even if Uniworld's members have no equity investment in each others' companies, their joint investment in the Uniworld venture -- a $200 million company with 2,000 employees in 17 European countries[17] -- certainly creates a natural incentive to discriminate in favor of that venture. In addition, foreign carriers allied with major U.S. carriers may have self-serving motives (*e.g.*, access to heavily discounted prices for telecommunications equipment) for refusing to enter into competitive correspondent agreements with unaffiliated U.S. carriers who are not in a position to offer such equivalent concomitant benefits in exchange for correspondent agreements.

Concomitantly, many of the newly-allied foreign carriers have the ability to discriminate because they have substantial market power that allows them to effectively control the telecommunications distribution facilities of their respective home markets. This type of asymmetric market access, which is detrimental to both U.S. service providers and U.S. consumers, is exactly what the Commission is attempting to address in the *NPRM*.[18]

Where foreign carriers effectively restrict their markets, only alliances with monopoly carriers in such markets can provide the end-to-end telecommunications services (with the

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[16] By refusing to make public details about their international alliances, such as Uniworld, well-established U.S. carriers may effectively conceal the existence and extent of the discriminatory incentives and opportunities of their foreign partners. For example, Communications TeleSystems International recently observed in its Opposition to Petition to Deny that AT&T's FCC Reports pursuant to Section 63.01(r) of the Commission's Rules "remain silent as to its Uniworld equity partners." CTS Opposition to Petition to Deny, File No. I-T-C-95-116 (filed March 3, 1995).

[17] *AT&T and Unisource Establish $200-Million European Joint Venture*, Communications Daily, Dec. 14, 1994, at 2.

[18] *See NRPM* at para. 22.

attendant advantages of lower costs and faster provisioning of services) and the "one-stop" shopping" that multinational companies demand. When potential new entrants such as ACC are foreclosed from effectively competing with the U.S. carrier allied with dominant foreign carriers for services offered on a correspondent basis, the result is exactly what the Commission is attempting to combat in the *NPRM* -- higher prices, less innovation, fewer choices of service providers, and lower quality of service for U.S. consumers.

B. The Commission Should Institute Safeguards that Protect U.S. Consumers from the Adverse Impact Resulting from the Formation of Global Alliances.

Given the demonstrated adverse impact of strategic alliances -- even alliances that do not involve direct foreign carrier investments in the U.S. market -- among major international carriers on emerging U.S. competitive international carriers, the public interest mandates that the Commission respond appropriately by reviewing all of the major U.S. carriers' substantial relationships with foreign carriers, regardless of whether the foreign carrier makes an equity investment in the major U.S. carrier. Specifically, the Commission should require that all major U.S. carriers with substantial shares of the U.S. international telecommunications traffic seek prior and formal Commission approval of such alliances.[19] The mere filing of co-marketing arrangements, under Section 43.51, would not be a sufficient safeguard against the adverse impact that alliances have on the Commission's goal of promoting effective competition in the global telecommunications market.

In addition, the Commission should adopt the following measures to ensure that its procompetitive goals in the *NPRM* are achieved:

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[19] Given the significant potential for anticompetitive conduct by alliance members, the Commission's review and approval process should provide for public notice and comment.

- approve a major U.S. carrier's participation in an alliance only after the carrier demonstrates that the proposed allied foreign carrier's home market is sufficiently liberalized for U.S. carriers, including a specific finding that correspondent agreements are made freely available to unaffiliated U.S. carriers without substantial entry barriers (*e.g.*, unnecessary high minimum traffic commitments and technology upgrade or other up-front payments);

- require the U.S. participant to guarantee that its foreign affiliate(s) will make all negotiated accounting rates simultaneously available to all U.S. carriers; and

- expand its regulatory oversight to apply, at a minimum, the *BT/MCI*[20] conditions to any major U.S. carrier participating in an alliance with major foreign carriers.[21]

Such an expansion of the Commission's oversight policies will support the development of increased global competitiveness by U.S. telecommunications carriers, increase the incentive for closed foreign markets to adopt more open policies, place additional pressure on above-cost accounting rates, and lower the prices consumers pay for telecommunications services around the world. Otherwise, major U.S. carriers and former monopolist, such as AT&T, can simply reduce the level of competition and evade FCC jurisdiction by engaging in unregulated

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[20] *Request of MCI Communications Corporation British Telecommunications PLC, Joint Petition for Declaratory Ruling Concerning Section 310(b)(4) and (d) of the Communications Act of 1934, as amended*, Declaratory Ruling and Order, 9 FCC Rcd. 3960 (1994) ("*BT/MCI*").

[21] As shown above, the Commission concerns over the potential of BT to leverage its dominant position in the U.K. telecommunications market to discriminate in favor of MCI over competing U.S. carriers apply with equal force to the potential for dominant foreign carriers to leverage their market power in their home country in favor of their U.S. partners. Accordingly, the Commission should require that U.S. carriers interested in entering into such alliances: (1) commit to not accepting any special concessions; (2) maintain and make available to the Commission records on the provisioning and maintenance of facilities and services by the foreign carrier; (3) make its monthly circuit status reports of circuits for each route publicly available on a quarterly basis; (4) file with the Commission notification of each additional circuit on the specified routes, specifying the joint owner; and (5) file with the Commission quarterly reports of revenue, number of messages and number of minutes of both originating and terminating traffic on each specified route within 30 days from the end of the quarter.

international expansion through the participation of purportedly "non-exclusive" global alliances.[22]

The significant potential for global alliances to contravene the Commission's procompetitive goals further warrants specific Commission review of AT&T's actions. Specifically, AT&T has repeatedly attempted to limit Commission scrutiny of its various alliances and services that distort the U.S. settlements balance. For instance, AT&T has taken the position that its alliances are outside the U.S. regulatory oversight because no foreign investment in AT&T is involved. Similarly, AT&T has ignored the Commission's directive that U.S. facilities-based carriers file information on the effects that "country direct" services have on the U.S. settlements deficit in their accounting rate progress reports.[23] Meanwhile, AT&T has repeatedly attempted to impose additional, burdensome reporting requirements on small, non-dominant international carriers, despite the fact that such reports have a negligible affect on the Commission's balance of payment concerns.[24] AT&T has also aggressively invoked the Commission's regulatory process to delay and restrain international private line resale competition by employing a variety of discredited regulatory arguments in its "Petitions to

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[22] As AT&T itself has recognized, "[t]he lessons from America and Britain is that the old monopolies will strive desperately to undermine new challengers." AT&T Corp. Petition to Deny, File No. I-T-C-95-056 (filed December 29, 1994), at 19 (*citing Unraveling Europe's Telephones,* The Economist, Dec. 3, 1994, at 18-19).

[23] *See* LDDS Communications, Inc. Reply Comments, *Draft Manual for Filing Section 43.61 Data*, File No. CCB-IAD 95-101 (filed March 31, 1995).

[24] By contrast, AT&T country direct services such as USA Direct World Connect (*i.e.*, third country calling via international 800 Services) have a significant impact on the U.S. settlements deficit. As noted above, however, AT&T steadfastly refuses to provide the public with data on these services.

Deny."[25] AT&T's tactics, which have impeded the Commission's efforts to achieve its broader goal of promoting the U.S. public interest in effective international telecommunications competition, simply expose AT&T's real intentions of protecting its substantial market share in the provision of international telecommunications services.[26]

Despite AT&T's unabashed attempt to avoid Commission scrutiny of its alliances abroad, the Commission must subject AT&T to, at a minimum, the same scrutiny as foreign carriers seeking to enter or expand their presence in the U.S. market. Under the Commission's existing policies, for purposes of classifying a U.S. carrier as dominant or nondominant on a particular route, a presumption of dominance will be made if that U.S. carrier has a monopoly affiliate at the foreign end of a given international route.[27] As discussed in detail above, the same

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25/ For example, AT&T unabashedly and repeatedly proffers in its Petitions to Deny the Commission-rejected mirror reciprocity standard (*i.e.*, equivalency of foreign markets must be based on an environment that mirrors the U.S.). Indeed, the Commission once again had to reject AT&T's timeworn mirror reciprocity approach to foreign-affiliated carrier entry into the U.S. international telecommunications markets in the NPRM. (Commission noted that its proposed entry standard for foreign-affiliated carriers, "unlike AT&T's, *purposely*, does not require 'mirror reciprocity.'") (emphasis added). *NPRM* at para. 49.

26/ ACC notes that AT&T recently announced its best year of earnings and revenue growth since the 1984 breakup of AT&T's monopoly. Analysts stated that "AT&T now has the same revenue as the entire Bell system just before the breakup in 1984, when they spun off about 85 percent of their assets." *AT&T's '94 Profit Highest Since '84 Breakup*, The Washington Post, Jan. 25, 1995, at F4. Further, analysts observed that "[t]he scale and power of AT&T -- long an industry giant -- is now breathtaking . . . with presence in every area of the mushrooming global telecommunications industry." *Id.; Earnings: AT&T Sales Up 11% in '94, Best Since Breakup*. The Los Angeles Times, Jan. 25, 1995, at D2. Further, AT&T's estimated 1994 international telecommunications revenues of $18.75 billion comprised of approximately 25.2% of the world total for such revenues. *Who'll be the First Global Phone Company?*, Business Week, Mar. 27, 1995, at 176.

27/ *See* 7 FCC Rcd. at 7334; 47 C.F.R. at 63.10(a)(1)-(3) (1994). In adopting this presumption of dominance, the Commission reasoned that an affiliated monopoly carrier on the foreign end would have both the incentive and the ability to discriminate against unaffiliated U.S. carriers through its control of bottleneck facilities in the destination country.

presumption of dominance applies equally to major U.S. carriers allied through a joint venture with a foreign carrier possessing market power. ACC therefore submits that the Commission should impose full dominant carrier regulation on AT&T on all international routes where it is allied with a foreign carrier that possesses market power, including the WorldPartners arrangement[28] and the Uniworld joint venture.[29] Such action would, at a minimum, generate more adequate information that the Commission could use in devising appropriate regulatory safeguards to combat any anticompetitive behavior exhibited by AT&T's foreign monopoly partners. Furthermore, these regulations would ensure that AT&T does not receive more favorable treatment from its allied foreign carriers than competing U.S. carriers whose alliances involve foreign investment in U.S. carriers.

III. CONCLUSION

Wherefore, ACC respectfully requests that the Commission use this proceeding to expand its international dominant carrier and market entry policies so that they can adequately address the rapidly changing international telecommunications market. Specifically, ACC urges the Commission to adopt policies such as those recommended above that promote the U.S. public interest by protecting against the possible anticompetitive behavior of foreign carriers that seek

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[28] WorldPartners is an alliance with equity and associated members. Equity members of WorldPartners include AT&T, Kokusai Denshin Denwa Co. Ltd., Singapore Telecom and the Unisource consortium. The alliance's non-equity partners include: Korea Telecom, Telstra Corp. Ltd. of Australia, Hong Kong Telecom, Unitel of Canada (20% owned by AT&T), and Telecom New Zealand.

[29] Under the dominant carrier regulations, AT&T should be required to obtain Commission approval before adding circuits, be required to file cost support with tariffs on 45 days' notice, and be required to file traffic and revenue reports on a quarterly basis for traffic between the U.S. and any countries that are members of either Unisource, Uniworld or WorldPartners.

to participate in the U.S. telecommunications market, whether through foreign-based alliances or investment in U.S. carriers.

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